



TELECOMMUNICATIONS MANAGEMENT CORP.

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**REVIEW OF FCC FORMS 1205 AND 1240
SUBMITTED BY TCI CABLEVISION OF CALIFORNIA, INC.
TO THE
CITY OF SUNNYVALE
April 9, 2003**

Telecommunications Management Corp. (TMC) has received the FCC Forms 1205 and 1240¹ submitted by TCI Cablevision of California, Inc. (TCI)² to the City of Sunnyvale. The cable operator is an AT&T Broadband-affiliated company (AT&T Broadband), although Comcast Cable Communications, Inc. (Comcast) is now the parent company. This report constitutes TMC's evaluation of this information.

The following caveats should be noted:

- The financial information has not been audited for accuracy. However, the data have been examined for consistency with industry standards. It is noted that the Forms are submitted with a signature under a provision that states that willful false statements are punishable by fine and/or imprisonment.
- The findings contained herein are based solely on the representations made in the materials provided by the cable operator. Should information come to TMC's attention that these representations (including representations as to equipment, installation and programming costs) were materially inaccurate, TMC reserves the right to modify its conclusions.
- The rules established by the FCC are subject to revision and modification. The evaluation is based on the rules established and available as of the date of this report.

As noted in TMC's previous reports to the City, the cable operator is required to submit the Form 1240 to the City 90 days prior to a proposed rate change. Key review periods for Form 1240 are as follows:

- The franchising authority has 45 days to determine whether the filing was incomplete.

¹ Form 1205 updates the permitted rates for regulated equipment and installation charges. Form 1240 updates the permitted rates for cable services.

² On the Form 1240, the "Name of Cable Operator" is listed as "W.A.V., Inc." In past years, the listing was as indicated in this report.

- The rates may go into effect after 90 days if the franchising authority has taken no action to disapprove the rates, subject to refund liability if the franchising authority subsequently issues a rate decision disapproving any portion of the proposed rates.
- At the end of the 90 days, if the cable operator inquires as to whether the franchising authority intends to issue a rate order, the franchising authority has 15 days to notify the operator of the intent to issue an order. If no response is provided within this period, the franchising authority loses its ability to order subsequent refunds.
- Subject to the conditions indicated above, the franchising authority has 12 months from the date the Form is filed to order refunds. Failure to act within this period results in the franchising authority losing its right to order refunds.

With limited exceptions, an operator who files Form 1240 is allowed only one rate change per year for regulated services. It is for this reason that the Form 1240 is required to be accompanied by a Form 1205 (for equipment and installation rates). With all regulated subscriber rates changed at the same time, the subscriber experiences only one annual rate change.³

Form 1240 allows an operator to project costs which are "reasonably certain and reasonably quantifiable." If the operator is incorrect in its projections, there is a "true-up" process for the subsequent Form 1240 filing. Past undercharges and overcharges can be factored into future rates. In the City, the true-up period is December 1, 2001 through November 30, 2002.

The City received the Forms 1205/1240 (and supporting materials) on February 27, 2003, for a rate change permitted to be implemented on June 1, 2003.

As previously noted, it is beyond the scope of TMC's review to determine whether the projected programming costs indicated are, in fact, "reasonably certain and reasonably quantifiable." However, the costs indicated appear to be within a range of reasonableness.

The City is reminded that its regulatory authority is limited by FCC regulations to the Basic Service Tier (marketed as "Basic") and the equipment and installation services associated with this tier. In the past, the Cable Programming Services Tier (marketed as "Expanded Basic") was regulated by the FCC upon receipt of a "complaint" from the franchising authority. However, by law, the FCC authority to regulate the rate for Expanded Basic expired on March 31, 1999.

³ For regulated rates only.

In reviewing the Forms, a number of items were noted which either deserve comment or require additional information. TMC's review of these Forms is summarized below.

FORM 1205

The computations contained in the Form have been accurately completed.

In the opening paragraph of its "Preparation Documentation," the cable operator indicates that it has chosen to aggregate its costs at the company level. This is permitted by an FCC ruling issued in 1996. AT&T Broadband/Comcast goes on to indicate that, "The average hours per installation, costs and hours of installation and maintenance of customer equipment were estimated based on a sample of Comcast's former AT&T Broadband cable systems." A copy has been provided of the "Sampling Plan & Analysis for Comcast Cable System Rates" which documents the methodology utilized in determining the averages.

In past submissions, AT&T Broadband utilized data for the entire preceding calendar year. This year, Comcast has utilized data from the first ten months of calendar 2002, and then calculated the estimated annualized amount.⁴ The FCC's Media Bureau Chief has given his preliminary approval to the methodology utilized by Comcast. A copy of the FCC letter is enclosed with this report (FCC DA 03-566, MB-ILR 03-1, released February 26, 2003).

Representatives of some communities have indicated that they feel the Comcast approach is not reasonable, and that they may appeal the process. Based on the FCC's recent history in rate issues, it appears unlikely that any such appeals would be received favorably.

In the past, a few communities have challenged whether the sampling methodology utilized by AT&T Broadband, and now Comcast, is an appropriate means of establishing estimates. Most local franchising authorities (including the City) have accepted the methodology as one reasonable attempt to estimate actual costs.

AT&T Broadband/Comcast indicates that the "Operator Selected Rate" is "To Be Determined." As a result it is not possible to determine whether rates will increase, decrease or remain unchanged. The "permitted" rates are summarized in Figure 1. It is noted that the regulatory authority of the City is for the "permitted" rate (i.e., this is the only rate which can be found to be reasonable or unreasonable).

FORM 1240

AT&T Broadband/Comcast has submitted two versions of the Form 1240. The first is based on the previous filing, while the second is designated for the "Rebuild" area. Both forms are virtually identical, with the only differences being in a few channels of programming (and associated costs).

⁴ Annualizing the data is done by dividing the ten month total by ten and multiplying by 12.

AT&T has completed both Forms 1240 in a manner consistent with the FCC regulations. The following items are noted:

- For the "old" area, the new maximum permitted rate for the Basic Service tier is \$15.45 (excluding franchise fees and the FCC regulatory fee). In Attachment 2 to Form 1240, the operator indicates "Basic Service Rates to be determined." The current Basic Service rate is \$13.09, so the maximum potential increase is \$2.36 or 18.0%. It is noted that the current \$13.09 is less than the previous maximum permitted rate of \$14.68.
- For the "rebuild" area, the new maximum permitted rate for Basic Service is \$15.46 (excluding franchise fees and the FCC regulatory fee). Based on the same information indicated above, the maximum potential increase is \$2.37, or 18.1%.
- The calculations for the "Expanded Basic" rate are not provided, since this service is no longer subject to rate regulation.
- AT&T Broadband/Comcast does not indicate any planned programming changes through the projected period (June 1, 2003 through May 31, 2004) for the Basic Service Tier.
- In the "old" system, several channels were deleted around the first of this year (KPST, America's Jewelry Store, Country Music Television and the Hallmark Channel). At the same time, three channels were added (C-SPAN 1 and 2 along with Public Access).
- In the "rebuild" system, similar changes were made. For the Basic Service tier, it appears, the primary programming difference between the old and new systems is the inclusion of the Hallmark Channel and a local programming channel.
- The cost of programming for the Basic Tier is indicated as \$1.02 (\$1.03 in the rebuild areas) during the projected period. As can be seen, this is a relatively small portion of the cost for this tier of service.
- There has been a decrease in the number of Basic subscribers in the City. Comparing the average subscriber count from the previous and current Forms 1240 for the true-up period, the change is as follows:

	2001	2002	Change	% Change
Sunnyvale	29,539	28,356	- 1,183	- 4.0%

The permitted rates for Basic Service, equipment and installation are summarized on Figure 1.

Based on the preceding, the following actions are recommended:

1. The City should provide AT&T Broadband/Comcast with the opportunity to comment on the conclusions of this report. Perhaps the simplest way to do this is to provide the operator with a copy of this report and request written comments by a specific date.

No objections from the operator are expected.

2. No action by the City is necessary to accept the rates as proposed. FCC regulations require the participation of interested parties (including the cable operator) and a "rate order" only in circumstances where a rate other than that calculated by the cable company is prescribed by the City.
3. If the City believes it is necessary to take action on the proposed rates, the City can approve the rates contained in the Forms 1205 and 1240, and summarized in Figure 1, as being calculated in a manner consistent with FCC regulations.

As with any rate order (if the City elects to issue an order), the cable operator has the option to appeal any decision to the FCC. According to Section 76.944 of the FCC regulations, the cable operator has 30 days from the release of the text of the City's decision to submit its appeal to the FCC. The City then has 15 days to respond to the appeal, with cable operator replies to franchising authorities' response due 7 days thereafter. Because of the potential for appeal, the City may wish to have legal counsel review any decisions prior to final action.

FIGURE 1
FCC FORMS 1205 & 1240 PERMITTED RATES

	Current	Permitted Rate @6/1/03*	Operated Selected Rate	Change to Selected Rate
Basic Service	\$13.09	\$15.45	TBD	--
Basic Service (Rebuild)	13.09	15.46	TBD	--
Installations				
Unwired Home	\$43.99	\$45.81	TBD	--
Prewired Home	27.99	30.34	TBD	--
Add'l. Outlet – Initial Trip	13.99	15.98	TBD	--
Add'l. Outlet – Separate Trip	21.99	24.62	TBD	--
Relocate Outlet	19.99	20.72	TBD	--
Upgrade (non-addressable)	15.99	16.44	TBD	--
Downgrade (non-addressable)	10.99	13.10	TBD	--
Upgrade/Downgrade (addressable)	1.99	1.99	TBD	--
VCR Connect – Initial Trip	5.99	6.82	TBD	--
VCR Connect - Separate Trip	12.99	14.76	TBD	--
Hourly Service Charge	28.49	30.92	TBD	--
Equipment				
Remote Control	0.30	0.33	TBD	--
Converter Type 1	2.00	7.92	TBD	--
Converter Type 2	4.70	9.67	TBD	--

Notes:

Basic Service rate excludes FCC regulatory fees.

All rates exclude franchise fee.

TBD = To be determined

* Rounded to two digits.



Federal Communications Commission
Washington, D.C. 20554

DA 03-566
MB-ILR 03-1
Released: February 26, 2003

Peter H. Feinberg, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, Suite 800
Washington, D.C. 20036-6802

Dear Mr. Feinberg:

On behalf of Comcast Cable Communications, you have asked for a response from the Media Bureau to a data calculation method Comcast proposes to use in preparing FCC Form 1205, which is the form used to determine regulated equipment and installation rates.

In your letter of January 31, 2003, you explain that, at the time of the Comcast acquisition of AT&T Broadband, Comcast merged over 4000 Comcast and AT&T Broadband general ledgers into approximately 400 ledgers. As a result, the financial data necessary to complete Form 1205 is not available for the former AT&T Broadband systems for the last two months of 2002. You propose to use the data that is available for the 10 months from January through October and "annualize" it by dividing by 10 and multiplying by 12. You state that the proposed methodology "will not adversely affect former AT&T customers or skew installation and equipment rates."

This is to advise you that, based upon your explanation and assurances, I am of the view that Comcast's proposed annualization of the Form 1205 data for the former AT&T systems is reasonable and not inconsistent with Commission rules and policies. Should this issue arise in the context of any specific rate appeal, the Commission would, of course, have to give consideration to whatever additional information might be adduced in the course of that proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Kenneth Ferree", is written over a horizontal line.

W. Kenneth Ferree
Chief, Media Bureau